

[2011] 10 S.C.R. 799

SURENDRA PRASAD SHUKLA

v.

THE STATE OF JHARKHAND & ORS.

(Civil Appeal No. 7548 of 2011)

SEPTEMBER 01, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Service Law – Dismissal – Appellant-Head Constable in State Police – His son along with two others arrested u/s. 392 IPC for robbing a car – Misconduct alleged against the appellant that he harboured his son in the government quarters occupied by him – Robbed car recovered from the yard in front of the government quarters – Disciplinary authority dismissed appellant from service for misconduct of negligence, indiscipline and conduct unbecoming of a police personnel – Order of dismissal upheld by the courts below – On appeal, held: No charge against the appellant-employee that he had in any way aided or abetted the offence u/s. 392 IPC or that he knew that his son had robbed the car and yet he did not inform the police – He was guilty of negligence of not having enquired from his son about the car kept in front of the government quarters occupied by him – Appellant served the government as a Constable/Head Constable for 34 years, and for such long service he earned pension – Punishment of dismissal from service so as to deprive him of his pension for the service that he had rendered for 34 years is shockingly disproportionate to the negligence proved against him – Thus, the punishment of dismissal from service is modified to compulsory retirement – Penal Code, 1860 – s.392.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7548 of 2011.

A From the Judgment & Order dated 9.6.2008 of the High Court of Jharkhand at Ranchi in L.P.A. No. 176 of 2008.

Nagendra Rai, Shantanu Sagar, Smarhar Singh, Abhishek Kumar Singh, Gopi Raman, P. Agarwal, Preeti R., T. Mahipal
B for the Appellant.

Anil K. Jha, Chhaya Kumari Respondents.

The Order of the Court was delivered by

C O R D E R

A. K. PATNAIK, J. 1. Leave granted.

2. This is an appeal by way of special leave under Article 136 of the Constitution against the order dated 09.06.2008 of the Division Bench of the Jharkhand High Court in L.P.A. No. 176 of 2008 (for short 'the impugned order').
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3. The facts very briefly are that the appellant was recruited as a Constable in the Bihar State Police on 07.08.1971 and he was later on promoted to the post of Head Constable (Hawaldar). On 04.07.2004, a complaint was lodged in the Muzaffarpur Sadar Police Station that three unknown persons had snatched a car, which was registered as Muzaffarpur Sadar P.S. Case No. 139 of 2004 under Section 392 of the Indian Penal Code (for short 'the I.P.C.'). The police recovered the stolen car on 13.07.2004 from the government quarters occupied by the appellant and arrested the son of the appellant, Raju Shukla @ Rajiv Shukla alongwith two others who were involved in the theft of the car. The appellant was suspended and a memo of charges was served on him on 20.07.2004 charging him with the misconduct of negligence, indiscipline, conduct unbecoming of a police personnel. It was also alleged that he had harboured the accused Raju Shukla. He was asked to submit his explanation. The appellant submitted his reply on 26.07.2004 to the Superintendent of Police, Purvi Singhbhoom,
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H Jamshedpur (for short the 'disciplinary authority') stating inter

alia that in the evening of 12.07.2004 he had been to Tulailadugri T.O.P. for duty and he was patrolling in that area the whole night and that when he returned to his government quarters in the morning around 6:15 a.m. on 13.07.2004, he saw the police of Muzaffarpur Sadar Police Station at his government quarters, who had arrested his son alongwith two others, and had seized the stolen Matiz car. He also stated in his reply that he did not get any time to question his son and that he had no idea that his son was involved in the crime. The enquiry officer then carried out the enquiry and submitted his report holding the appellatant guilty of the charges and the disciplinary authority after considering enquiry report took the view that in the circumstances it was not reasonable that the appellatant should serve the police force and passed an order of dismissal against him. The appellatant carried an appeal to the Deputy Inspector General, Singhbhoom, but the appeal was dismissed. Thereafter, the appellatant filed a revision before the Inspector General of Police, but the same was also rejected.

4. The appellatant then filed Writ Petition (s) No. 6728 of 2006 under Article 226 of the Constitution in the Jharkhand High Court challenging his dismissal from service. The learned Single Judge of the High Court dismissed the Writ Petition by order dated 30.04.2008. Aggrieved, the appellatant filed L.P.A. No. 176 of 2008 and the Division Bench of the High Court dismissed the L.P.A. by the impugned order. When the Special Leave Petition was heard on 17.10.2008, this Court issued notice to the respondent to show-cause why the punishment of dismissal should not be altered to compulsory retirement. In response to the notice, respondent no.4 has appeared and filed his counter affidavit and has contended that the appellatant is guilty of keeping the robbed Matiz car and giving shelter to the accused persons in his house and has not informed the matter to the higher authorities and that the conduct of the appellatant has tarnished the image of the police force and that the punishment of dismissal should not be altered to compulsory retirement.

A 5. We have heard the learned counsel for the parties and
we find that the misconduct alleged against the appellant was
that he had harboured the accused Raju Shukla in the
government quarters occupied by him and the stolen car was
recovered from the yard in front of the government quarters. The
B enquiry officer has recorded a finding that the appellant was
guilty of the misconduct. The disciplinary authority accepted the
finding of the enquiry officer and was of the view that the
appellant should not any longer serve the police force and
dismissed him from service and the appellate authority and the
C revisional authority have agreed with the disciplinary authority.
As the appellant was working as a Head Constable, it was his
duty to enquire from his son about the car kept in front of the
government quarters occupied by him, and by not performing
this duty he was guilty of negligence. The fact that the son of
D the appellant, who was an accused in an offence under Section
392 IPC, and his accomplices were found in the government
quarters under the occupation of the appellant and the fact that
the stolen car was also recovered from the yard in front of his
government quarters were sufficient to hold the appellant guilty
of negligence which affected the image of the police force in
E the area and for such negligence the authorities were right in
taking the view that the appellant should not be retained in
police service.

F 6. The question which however arises for our decision is
whether such negligence of the appellant was sufficient for the
disciplinary authority to dismiss him from service. There was
no charge against the appellant that he had in any way aided
or abetted the offence under Section 392 IPC or that he knew
that his son had stolen the car and yet he did not inform the
G police. The appellant, as we have held, was guilty of negligence
of not having enquired from his son about the car kept in front
of the government quarters occupied by him. The appellant had
served the government as a Constable and thereafter as a
Head Constable from 07.08.1971 till he was dismissed from
H service on 28.02.2005, i.e. for 34 years, and for such long

service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant from service so as to deprive him of his pension for the service that he had rendered for long 34 years was shockingly disproportionate to the negligence proved against him. A

7. We accordingly, allow this appeal in part and modify the punishment of dismissal from service to compulsory retirement. The L.P.A. and the Writ Petition filed by the appellant before the High Court are allowed in part. There shall be no order as to costs. B

N.J.

Appeal partly allowed. C